

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action electronically sent August 9, 2007 ("*Office Action*"). Claims 1-14 and 22 are pending and rejected in the Application. Applicants have amended Claims 1 and 22 and have added Claims 23-30. Applicants respectfully request reconsideration and favorable action in this case.

#### **Rejections Under 35 U.S.C. § 102 and 35 U.S.C. § 103**

The *Office Action* states that Claims 1 and 3-10 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2003/0099286 issued to Graziano et al. ("*Graziano*"). Claims 2 and 13 are rejected under 35 U.S.C. § 103(a) as being anticipated by *Graziano*. Claims 11, 12, 14, and 22 are rejected under 35 U.S.C. 103(a) as being anticipated by *Graziano* in view of U.S. Publication No. 2002/0172273 issued to Baker et al. ("*Baker*"). Applicants respectfully traverse these rejections.

Independent Claim 1, as amended, is allowable at least because both *Graziano* and *Baker* fail to disclose, expressly or inherently, a data switch operable to "automatically select one of the first predetermined PSD and the second predetermined PSD that will establish a link to the one or more CPE devices when a user selects another one of the first predetermined PSD and the second predetermined PSD that will not establish a link to the one or more CPE devices." *Graziano* involves communications between modems using PSDs chosen according to line conditions, but does not disclose a data switch operable to "automatically select one of the first predetermined PSD and the second predetermined PSD that will establish a link to the one or more CPE devices when a user selects another one of the first predetermined PSD and the second predetermined PSD that will not establish a link to the one or more CPE devices." Likewise, *Baker* involves allocating a system resource in a communications system, but does not disclose a data switch operable to "automatically select one of the first predetermined PSD and the second predetermined PSD that will establish a link to the one or more CPE devices when a user selects another one of the first predetermined PSD and the second predetermined PSD that will not establish a link to the one or more CPE devices." For at least these reasons, Independent Claim 1, as amended, is allowable, as are Claims 2-14 that depend therefrom. Reconsideration and favorable action is requested.

Independent Claim 22, as amended, is allowable at least because both *Graziano* and *Baker* fail to disclose, expressly or inherently a data switch operable to “communicate with the one or more CPE devices using a plurality of second PSDs that do not comply with a public standard, the second PSDs being substantially optimal for communications across lines coupling the switch with the one or more CPE devices.” *Graziano* does not disclose this limitation, and in fact specifies that PSDs must be designed within the constraints of certain modem standards:

The G.SHDSL and HDSL2 standards may specify the transmitted power to be less than a certain value at any given frequency. A plot of these values vs. frequency may be referred to as the "mask". Standards may also specify the total power to be within a certain range. Within these constraints, the shape of the transmitted power-spectral density (PSD) is left open to the designers.

*Graziano* para. 193; *see also* *Graziano* para. 196 (emphasis added). To Applicant’s knowledge, *Baker* also fails to disclose, expressly or inherently, “communicate with the one or more CPE devices using a plurality of second PSDs that do not comply with a public standard, the second PSDs being substantially optimal for communications across lines coupling the switch with the one or more CPE devices.” For at least these reasons, Independent Claim 22, as amended, is allowable. New claims 23 and 24 depend from Claim 22 and are likewise allowable. Reconsideration and favorable action is requested.

### **No Waiver**

All of Applicants’ arguments and amendments are without prejudice or disclaimer. Applicants reserve the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are sufficient to overcome the anticipation and obviousness rejections.

**CONCLUSION**

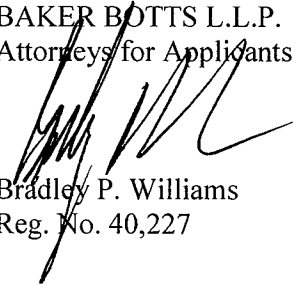
Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

Applicants do not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants

  
Bradley P. Williams  
Reg. No. 40,227

Date: 11/8/07

**Correspondence Address:**

Customer Number: **05073**